Supreme Court, U.S.
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No. 99-602

IN THE

Supreme Court of the United States

GLEN TAYLOR, Executor of the Estate of VERA TAYLOR,

Petitioner,

v.

PAUL B. HALL REGIONAL MEDICAL CENTER, d/b/a PAINTSVILLE HOSPITAL CO. and HEALTH MANAGEMENT ASSOCIATES, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a hospital can be held liable to a patient for an alleged violation of the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, when the hospital screened the patient, admitted her to the hospital, treated her medical condition and stabilized her before transfer?

2. Whether the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, creates a federal cause of action for medical malpractice and is a substitute for state law medical malpractice claims?

STATEMENT PURSUANT TO RULE 29.6

Respondent, Health Management Associates, Inc., is the parent company of Paul B. Hall Regional Medical Center. No publicly held company owns 10% or more of the stock of either Respondent.

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STATEMENT OF JURISDICTION

Jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1). The considerations governing this Court's jurisdiction on a writ of certiorari are enumerated in Rule 10 of the Rules of the Supreme Court of the United States. That rule provides, in relevant part, "A petition for a writ of certiorari will only be granted for compelling reasons." Respondents submit that this is a case of inadequate pleading in a Complaint filed in federal court by petitioner to circumvent Kentucky state law which would bar petitioner's claim under the relevant statute of limitations and it must be denied.

STATEMENT OF THE CASE

Paul B. Hall Regional Medical Center is a small hospital located in Paintsville, Kentucky, which offers primary medical care to the residents of rural Eastern Kentucky. The hospital has an emergency department and is licensed by the State of Kentucky for forty (40) inpatient beds. Petitioner's decedent, Vera Taylor, came to the emergency department at Paul B. Hall Regional Medical Center on August 22, 1995, at 10:56 p.m. complaining of shortness of breath. Ms. Taylor, who was eighty-one (81) years old, was evaluated by a physician in the hospital's emergency department.[1]

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1. The discharge summary contained in Ms. Taylor's medical records maintained by Paul B. Hall Regional Medical Center which was attached as an exhibit to Respondents' Motion to Dismiss and specifically referred to by the District Court in its opinion dismissing Petitioner's claim, is reproduced in the Appendix hereto at pp. A1-A2.

In the emergency room, Ms. Taylor had a chest x-ray and an electrocardiogram. (A1). Her blood count was tested and she was administered fluids by I.V. to help with her hydration. (A1). She was administered oxygen, antibiotics and breathing medications. (A1). After conducting an examination and testing Ms. Taylor, the emergency room physician diagnosed her as suffering from acute congestive heart failure as well as acute respiratory distress and admitted her to the hospital in the early morning hours of August 23, 1995.

Ms. Taylor was treated in the hospital for congestive heart failure and respiratory distress. (A1). She responded to the prescribed treatment and her overall condition greatly improved. (A1). On August 24, 1995, at approximately 4:30 p.m., while still a patient in the hospital, Ms. Taylor became suddenly unresponsive and demonstrated weakness in her lower extremities and left arm. (A1). A CT scan was performed which showed a possible intracranial hemorrhage (stroke). (A1). Respondents contacted King's Daughters' Hospital, a larger medical facility located in nearby Ashland, Kentucky, where Ms. Taylor could obtain an evaluation and treatment by a neurosurgeon, services which were not available at Paul B. Hall Regional Medical Center. She was transferred by ambulance to King's Daughters' Hospital on the evening of August 24, 1995. (A2).

Ms. Taylor died as a patient at King's Daughters' Hospital four (4) days later, on August 29, 1995. Petition for Writ of Certiorari 3. Glen Taylor, her husband, was appointed executor of Ms. Taylor's estate on September 13, 1995. He filed this lawsuit against Respondents in the United States District Court for the Eastern District of Kentucky, on August 22, 1997, alleging seven (7) separate causes of action against Respondents.

Count I of the complaint alleged that Respondents deprived Ms. Taylor her of her right to life as provided in the United States Constitution by improper treatment, abuse, mismanagement and misdiagnosis. Count II of the complaint alleged that Ms. Taylor was denied her right to liberty and right to adequate medical treatment as established in the United States Constitution by having arterial blood gas tests forced upon her against her will. Count III of the complaint alleged that Ms. Taylor was denied her right to liberty and adequate medical treatment as established in the Fourteenth Amendment of the United States Constitution by not being informed of her right to refuse or accept certain medical treatment. Count IV of the complaint alleged that Respondents intentionally failed to provide ambulance transportation for Ms. Taylor, thus depriving her of her right to liberty, safety and freedom of movement as guaranteed by the United States Constitution. Count V of the complaint alleged that Respondents deprived Ms. Taylor of her constitutional right to adequate medical care and treatment in violation of the United States Constitution by failing to provide her with the benefits and protection of hospital policies and protocols. Count VI of the complaint alleged that Respondents discriminated against Ms. Taylor due to her age by forcing her to have invasive procedures performed upon her against her will. Count VII of the complaint alleged unspecified violations of the Emergency Medical Treatment and Active Labor Act (EMTALA). Petition for Writ of Certiorari A24-A32.

The Respondents moved the District Court to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). The District Court granted the Respondents' motion to dismiss and entered judgment for Respondents on all of the counts contained in the complaint. In dismissing the EMTALA

claim, the Court ruled that Petitioner failed to set out any facts in the complaint which made out a sufficiently pled claim for failure to properly screen, stabilize or transfer Ms. Taylor. Petition for Writ of Certiorari A21.

The District Court recognized the fundamental flaw in the Petitioner's effort to state an EMTALA claim. This is not a case where the hospital refused to provide an appropriate medical screening examination in violation of 42 U.S.C. § 1395dd(a). The hospital examined Ms. Taylor and admitted her as a patient. This is not a case where the hospital failed to provide necessary stabilizing treatment pursuant to 42 U.S.C. § 1395dd(b). The hospital treated her medical conditions after she was admitted. This is not a case where the hospital transferred a patient without properly stabilizing the patient's medical condition in violation of 42 U.S.C. § 1395dd(c). Although the hospital transferred Ms. Taylor to another hospital after she suffered a stroke, the complaint does not allege that she was improperly transferred without being stabilized. The complaint alleges that there was an improper delay in the transfer. Petition for Writ of Certiorari A27. All of the allegations contained in the sparsely worded complaint sound in negligence. The District Court properly held that an EMTALA claim "is not a substitute for state law malpractice actions, and was not intended to guarantee proper diagnosis or to provide a federal remedy for misdiagnosis or medical negligence." Petition for Writ of Certiorari A21.

The District Court went further and examined whether the complaint was otherwise sufficient to plead an EMTALA claim. In this regard, the District Court examined the hospital discharge summary which was attached to Respondents' motion to dismiss as an exhibit. In doing so, the District

Court construed Respondents' motion as a motion for summary judgment under Fed. R. Civ. P. 56, as permitted by Rule 12(b).

In reviewing the discharge summary, the District Court pointed out several factual inaccuracies in the complaint. The Court noted that Petitioner's assertion that the discharging doctor stated that coronary arrest (CA) needed to be ruled out was contradicted by the discharge summary which stated that intercranial hemorrhage needs to be ruled out. Petition for Writ of Certiorari A20. Second, the Court noted that Petitioner's assertion that Ms. Taylor did not receive proper screening because congestive heart failure was not ruled out was contradicted by the discharge summary which showed that her congestive heart failure was treated and improved. Petition for Writ of Certiorari A20. Lastly, the District Court pointed out that Petitioner's contention that Ms. Taylor was not stabilized at the time of her transfer, based on the fact that she was transferred five (5) hours after the attending physician determined that she should be transferred, did not support a claim that she was not stable at the time of the transfer. Petition for Writ of Certiorari A20-21.

Petitioner only appealed the District Court's dismissal of the EMTALA claim. Therefore, the only issue before the Sixth Circuit Court of Appeals was whether the District Court erred in dismissing Taylor's EMTALA claim. Petition for Writ of Certiorari A2. The Sixth Circuit agreed that Petitioner failed to properly plead an EMTALA claim in the complaint. Petition for Writ of Certiorari A4. The Sixth Circuit held that "bare assertions of legal conclusions" are insufficient to satisfy Fed. R. Civ. P. 8(a), which requires every complaint to include "either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." Petition for Writ of Certiorari A5.

After upholding the District Court's dismissal of the EMTALA claim pursuant to Rule 12(b)(6), the Circuit Court also examined the District Court's alternative ruling that, even if Respondent had properly pled his complaint, the EMTALA claim would still fail because the record demonstrated that Respondents did not improperly screen, stabilize or transfer Ms. Taylor. Petition for Writ of Certiorari A4. The Sixth Circuit noted that the District Court went outside the pleadings by examining Ms. Taylor's hospital discharge summary and, to that limited extent, construed Respondent's Motion as one for summary judgment under Fed. R. Civ. P. 56, instead of one for dismissal under Rule 12(b)(6). Reviewing the decision, *de novo*, the Court of Appeals found that the District Court's judgment should be affirmed because no genuine issue of material dispute exists as to the material facts cited by the District Court, and those facts demonstrate that Respondents were entitled to judgment as a matter of law. Petition for Writ of Certiorari A4. The Court of Appeals also found that Petitioner's complaint pled a medical malpractice action, not an EMTALA claim. The Court noted that an EMTALA claim is not a substitute for a state law medical malpractice action and EMTALA was not intended to guarantee proper diagnosis or provide a federal remedy for a medical misdiagnosis or other medical negligence. Petition for Writ of Certiorari A6.

REASONS FOR DENYING THE WRIT

I.

CERTIORARI SHOULD NOT BE GRANTED BECAUSE THE COMPLAINT FAILS TO STATE AN EMTALA CLAIM.

As pointed out in the opinions of the District Court and the Sixth Circuit Court of Appeals, Petitioner failed to properly plead a valid cause of action against Respondents in this matter as required by Rule 8(a) of the Federal Rules of Civil Procedure. Although each court commented about the requirements of 42 U.S.C. § 1395dd, they did so only after specifically holding that Count VII of the plaintiffs' complaint, which alleged a violation of EMTALA, was inadequate to plead a valid cause of action to satisfy Fed. R. Civ. P. 8(a). Fed. R. Civ. P. 8(a) requires every complaint to include a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To satisfy the notice pleading requirements, a complaint must contain more than bare assertions of legal conclusions. Such conclusory allegations do not sufficiently plead a cause of action. *See Papasan v. Allain*, 478 U.S. 265, 286 (1986); *Scheid v. Fanny Farmer Candy Shops, Inc.*, 59 F.2d 434, 436 (6th Cir. 1988).

Petitioner's complaint contains a hodgepodge of vaguely stated federal constitutional law claims. At the time the complaint was filed in federal court, Petitioner was beyond the statute of limitations to bring an action for medical malpractice in Kentucky. Kentucky has a one (1) year statute of limitations for medical malpractice claims. KY. REV. STAT. ANN. § 413.140(1)(e) (Baldwin 1991). In Kentucky, if a

personal representative is appointed within one (1) year of the date of death, he is then granted one (1) year from the date of his appointment to file suit. If no suit is filed within that time, the action for wrongful death dies. KY. REV. STAT. ANN. § 413.180(1) (Baldwin 1991). *Conner v. George W. Whitesides Co.*, 834 S.W.2d 632 (Ky. 1992), *Southeastern Ky. Baptist Hosp. v. Gaylor*, 756 S.W.2d 467 (Ky. 1988). Ms. Taylor died on August 29, 1995. Glen Taylor was appointed executor of her estate on September 13, 1995. Consequently, under Kentucky law, Mr. Taylor had to file his suit by September 13, 1996. He filed this lawsuit in federal court on August 22, 1997, eleven (11) months too late to bring a claim of malpractice based on Kentucky law.

In his complaint, Petitioner plead his EMTALA claim as follows:

COUNT VII

1. That Plaintiff reiterates and realleges all allegations previously made.

2. That the Defendant is governed under the regulations and guidelines of the Emergency Medical Treatment and Active Labor Act (EMTALA).

3. That the Defendant violated the provisions of this act.

4. That due to the Defendant's violation of the above mentioned act, the Plaintiff suffered harm.

5. That under the act, the Plaintiff is able to recover damages in accordance with state personal injury guidelines.

Petition for Writ of Certiorari A31.

Even if this pleading is sufficient under Rule 8(a) of the Federal Rules of Civil Procedure, the District Court specifically found the plaintiff's complaint failed to state an EMTALA claim. The hospital discharge summary shows clearly that Ms. Taylor was provided emergency care, she was administered screening examinations in the emergency room, she was hospitalized and her condition was stable before transfer, all as required by EMTALA. EMTALA imposes a limited duty on hospitals with emergency rooms to provide emergency care to all who come there. The purpose of the Emergency Medical Treatment and Active Labor Act was to address the "dumping" of uninsured, underinsured, or indigent patients into other hospitals or hospitals who did not want to treat them. *Summers v. Baptist Medical Center Arkadelphia*, 91 F.3d 1132 (8th Cir. 1996). Its core purpose is to deal with the problem of patients being turned away from emergency rooms for non-medical reasons. *Bryan v. University of Virginia Medical Center*, 95 F.3d 349 (4th Cir. 1996). It is not intended to guarantee proper diagnosis or to provide a federal remedy for misdiagnosis or medical negligence. *Vickers v. Nash General Hospital, Inc.*, 78 F.3d 139 (4th Cir. 1996).

Even if a hospital physician who performs an examination makes a misdiagnosis that could subject him and the hospital to liability in a medical malpractice action under state law, the hospital is not liable under EMTALA. *Marshall v. East Carroll Parish Hospital*, 134 F.3d 319

(5th Cir. 1998). EMTALA was enacted to fill a void in traditional state tort law by imposing on hospitals a legal duty which did not exist under common law, to provide emergency care to all. *See Brooks v. Maryland Gen. Hosp. Inc.*, 996 F.2d 708, 714-15 (4th Cir. 1993); *Hardy v. New York City Health & Hospitals Corp.*, 164 F.3d 789 (2nd Cir. 1999). EMTALA creates a new cause of action, generally unavailable under state tort law, for what amounts to a failure to treat. *Gatewood v. Washington Healthcare Corp.*, 933 F.2d 1037, 1041 (D.C. Cir. 1991).

As Ms. Taylor's discharge summary clearly shows, she was seen and evaluated in the emergency room at Paul B. Hall Regional Medical Center. After she was admitted as a patient to the hospital and received medical treatment, her condition stabilized and even improved. She suffered a stroke two (2) days after her admission to the hospital. Paul B. Hall Regional Medical Center did not have a neurosurgeon on staff to evaluate or treat Ms. Taylor for this new medical condition which came about two (2) days after she presented to the hospital's emergency room. She was stabilized and transferred to a larger hospital where she died five (5) days later. There is no allegation in the complaint that Ms. Taylor was not stable at the time of the transfer or that she suffered any deterioration in her condition or resultant harm, as a result of the transfer. In fact, paragraphs 16 through 22 of the complaint allege that there was a delay in transfer, not that Ms. Taylor was transported improperly. Petition for Writ of Certiorari A27-A28. Petitioner's complaint did not allege that Ms. Taylor was not stabilized before her transfer to King's Daughters' Hospital. It alleges that her transfer was not made in a timely fashion once her treating physician determined that she should be transferred. A negligent delay in transfer may constitute negligence or malpractice under

state law, but cannot support an Emergency Medical Treatment and Active Labor Act (EMTALA) claim for an inappropriate transfer. The transfer requirements of EMTALA do not apply unless the hospital transfers a patient without stabilizing an emergency medical condition. *Baber v. Hospital Corp. of America*, 977 F.2d 872 (4th Cir. 1992).

II.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE EMTALA WAS NOT INTENDED TO CREATE A FEDERAL CAUSE OF ACTION FOR MEDICAL MALPRACTICE

The legislative history of EMTALA demonstrates that "Congress never intended to displace state malpractice law." *Brooks*, 996 F.2d at 714. This intent to supplement, but not supplant, state tort law is evident in EMTALA's limited preemption provision. *Brooks*, 996 F.2d at 715. "The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section." 42 U.S.C. § 1395dd(f).

EMTALA, which applies to all hospitals that participate in the federal Medicare program, imposes two (2) primary obligations on those hospitals. First, when an individual shows up for treatment at a hospital's emergency room, "the hospital must provide for an appropriate medical screening exam . . . to determine whether or not an emergency condition" exists. 42 U.S.C. § 1395dd(a). Second, if the screening examination indicates that an emergency medical condition does exist, the hospital ordinarily must "stabilize the medical condition" before transferring or

discharging the patient. 42 U.S.C. § 1395dd(b). A hospital can only transfer patients who are not stabilized if a physician certifies that the medical benefits reasonably expected from the provision of medical service at another facility outweigh the increased risks to the individual from effecting the transfer. 42 U.S.C. § 1395dd(c).

Every court of appeals that has considered the question has unanimously rejected the notion that EMTALA creates a federal cause of action for medical malpractice. *See Gatewood*, 933 F.2d 1037 (D.C. Cir. 1991) ("[we] cannot agree that [EMTALA] creates a sweeping federal cause of action with respect to what are traditional state-based claims of negligence or malpractice"); *Correa v. Hospital San Francisco*, 69 F.3d 1184, 1192 (1st Cir. 1995), *cert. denied*, 517 U.S. 1136 (1996) ("EMTALA does not create a cause of action for medical malpractice"); *Vickers*, 78 F.3d 138, 142 (4th Cir. 1996) ("the other circuit courts are universally in accord on the need to distinguish EMTALA claims from the standard claims of negligence and misdiagnosis"); *Marshall*, 134 F.3d 319, 322 (5th Cir. 1998) ("we agree with the other circuits which have interpreted EMTALA that the statute was not intended to be used as a federal malpractice statute"); *Cleland v. Bronson Healthcare Corp, Inc.*, 917 F.2d 266, 272 (6th Cir. 1990) (the language of EMTALA "precludes resort to a malpractice or other objective standard of care"); *Summers*, 91 F.3d 1132, 1137 (8th Cir. 1996) ("[E]very court that has considered EMTALA has disclaimed any notion that it creates a general federal cause of action for medical malpractice in emergency rooms"); *Eberhardt v. City of Los Angeles*, 62 F.3d 1253, 1258 (9th Cir. 1995) ("the statutory language of the EMTALA clearly declines to impose on a hospital a national standard of care in screening patients"); *Repp v. Anadarko Mun. Hosp.*, 43 F.3d 519, 522

(10th Cir. 1994) ("[W]e believe that the language of § 1395dd(a) precludes the adoption of a standard tantamount to a federal malpractice statute"); *Holcomb v. Monahan*, 30 F.3d 116, 117 (11th Cir. 1994) ("§ 1395dd(a) is not designed to redress a negligent diagnosis by the hospital; no federal malpractice claims are created").

The complaint, on its face, pleads a state law medical malpractice claim, not an EMTALA claim. The factual assertions contained in the complaint allege that Ms. Taylor was misdiagnosed as suffering from pneumonia rather than congestive heart failure. Petition for Writ of Certiorari A26. The complaint alleges that she suffered a stroke due to improper treatment, abuse, mismanagement and misdiagnosis. Petition for Writ of Certiorari A26. The complaint alleges that the hospital negligently delayed transferring Ms. Taylor to another health care facility. Petition for Writ of Certiorari A27. These allegations constitute a state based medical malpractice claim, not an EMTALA claim.

CONCLUSION

Just as the complaint sought to improperly transform a traditional medical malpractice cause of action into an EMTALA claim because Petitioner's case was barred under state law by the applicable statute of limitations, Petitioner's Petition for Writ of Certiorari tortures the facts of this case in an effort to expand the holding on this Court in *Roberts v. Galen of Virginia, Inc.*, 525 U.S. 249 (1999).

Failure to plead an improper motive has nothing to do with this case. The complaint fails to state an EMTALA claim no matter how liberally it is construed. The complaint alleges

that the hospital misdiagnosed Ms. Taylor's condition. This allegation does not state an EMTALA claim. The complaint alleges that the hospital negligently caused Ms. Taylor to suffer a stroke while she was a patient in the hospital. This allegation does not state a valid EMTALA claim. The complaint alleges that the hospital failed to transfer Ms. Taylor to another health care facility in a timely fashion. This allegation does not state a valid EMTALA claim.

The EMTALA claim seems to have been added as the final count of the complaint almost as an afterthought. It is a blatant effort to get around the state statute of limitations which bars a traditional medical malpractice case as being untimely filed. The District Court and the Court of Appeals recognized the case for what it was and properly dismissed the complaint because it failed to properly state an EMTALA claim. Somehow, as the case has wound its way through the federal appellate system, it has transformed itself into a case claiming to involve substantial legal questions which require the attention of the highest court in the land. The case is simple and does not involve issues worthy of the attention of this Court. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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